laws because it is effected through the instrumentality of a process which is lawful in a foreign tribunal. By interposing to prevent it, we do not interfere with the jurisdiction of courts in other states, or control the operation of foreign laws. We only assert and enforce our own authority over persons within our jurisdiction to prevent them from making use of means by which they seek to countervail and escape the operation of our own laws, in derogation of the rights and to the wrong and injury of our own citizens."

DILIGENCE AND PRUDENCE AS AN ELEMENT OF GOOD FAITH.

By its decision in the case of *First National Bank of Birmingham, Alabama v. Gilbert & Clay,* 49 So. Rep., 513, the Supreme Court of the State of Louisiana accepts and adopts a common law doctrine as laid down by an Illinois court which seems to be too broad and too general a statement to stand as the accepted rule of law.

The question involved the payment of money by an authorized agent and the measure of caution called for by the party to whom it was paid. As the transaction took place in one state, though one party lived in and the action arose in another state, the law of the former state was applicable.

One Chisholm, a teller in the plaintiff bank, entered into a series of speculations with the defendant partnership, holding himself out to be the agent of an undisclosed principal who desired to keep out of the transactions. In the course of the speculations, Chisholm paid over, in various sums, the amount of $100,000.00. These amounts he paid while on duty as teller and through checks of his supposed principal which he handled in the ordinary course of business. The defendants, after dealing with Chisholm for some time, demanded to know his principal and upon his refusal to disclose him, closed out his account. At no time during the transactions did they make any effort to find out his authority as agent, or to assure themselves of the relations between Chisholm and his reputed principal. The money paid out was that of the plaintiff bank which alleges that the defendants, from the facts and conditions of the case, should have known that the undisclosed principal was a fictitious party and that Chisholm had been speculating for himself with the

funds of the bank. The bank sued, alleging that the facts of the case should have put the defendants on notice to inquire into Chisholm's authority and that failure to do so, under all the circumstances, was unexcusable and the partnership was therefore bound to refund the money. The Supreme Court of Louisiana, in affirming the decision of the lower court, adopted *in toto* the text of the Illinois case of *Merchants Loan & Trust Co. v. Lawson,* 90 Ill. Ap., 18, and held that money transferred to an honest taker and received in the due course of business and without knowledge of the felony, is held by good title against the one from whom it is stolen and that *bad faith alone will defeat the right of the taker: "Mere ground of suspicion or knowledge of the circumstances which would create suspicion in the mind of a prudent man or gross negligence on the part of the taker will not defeat his title. Bad faith alone will not; the test is honesty and good faith, not diligence."*

It is submitted that this view is one which is too broad and which extends the common law doctrine to such a limit that if accepted, it would increase the risk in ordinary business transactions and lower business morality in the interests of a doubtful commercial expediency. No rules of agency, no tests of good faith and no established lines of decisions can sustain this view as adopted by the Louisiana courts.

It is an accepted principle of law and of morals, *that wilful ignorance is equivalent to actual knowledge* and he who abstains from inquiry when inquiry ought to be made cannot be heard to say so and rely upon his ignorance. *Mackey v. Fullerton,* 7 Colo. 556; *Whitebread v. Boulroes,* 1 You. Coll. Ex-Reportr 303. And surely one who deals with an agent whose acts or supposed authority imply a doubt to that authority, is put to inquiry and discovery at his peril. 31 Cyc. 1322, says: "Every person therefore who undertakes to deal with an alleged agent is put upon inquiry and must discover at his peril that such pretended agent has authority and that it is in its nature and extent sufficient to permit him to do the proposed act and that its sources can be traced to the will of the alleged principal." The decisions make this even stronger, holding that *anything that arouses a suspicion obligates an inquiry and the law presumes that whatever the inquiry would disclose, is known.* See *Rochester & C. T. Ry. Co. v. Paviour,* 164 N. Y., 281; *Hennebery v. Moise,* 56

Ill., 394; *Hamlin v. Pettibone,* Fed. Cas. No. 5, 595; *Williamson v. Brown,* 15 N. Y. App. Cas., 354. Also see *Anderson v. Kissam,* 35 Fed. Rep., 799, which said: "When the transaction is such as should arouse suspicion of the agent's authority to represent his principal, it is the duty of those who deal with him in a representative character to apply to his principal for information."

Should the facts here have aroused suspicion in the minds of the defendants? Were they such that it were incumbent upon the defendants to use diligence and make *bona fide* efforts to ascertain whether Chisholm had the proper authority to pay over such funds for his undisclosed principal, or were the defendants justified in receiving the money in silence and because there was no actual bad faith assume there was no need to make any active inquiry?

It can hardly be doubted that the rule as laid down in the case under discussion is insufficient. Chisholm held himself out to be the agent of his undisclosed principal to carry out these speculations. *He offered no proof of his agency.* It cannot be disputed that there is no more settled rule in law that that *relations of agency cannot be proved by the mere declarations of the party claiming to be an agent where the fact of agency is at issue.* This has been unanimously held. See *Hullanphy Savings Bank v. Schott,* 135 Ill. 655; *Salmon Falls Bank v. Leyser,* 116 Mo. 51; *Proctor v. Tows,* 115 Ill. 138; *Marvin v. Wilbur,* 52 N. Y. 270; *Gifford v. Landrine,* 37 N. J. Eq. 127; also see *Meechem on Agency,* Sect. 70. This fact alone, the *uncorroborated statement of Chisholm of his authority as agent, should have warned the defendants* of the necessity of making further inquiry and of ascertaining the extent of his authority.

Did Chisholm, by paying the amounts lost in the speculation during his business hours as paying teller and by making such payments over his teller's window, disarm any suspicion on the part of Gilbert and Clay? *Hoer v. Miller,* 75 Pac. (Kans.) 76, says: "The fact that the cashier is personally interested in such a transaction is sufficient to put his creditor upon inquiry as to the actual extent of his, the cashier's authority." If Chisholm made these payments during his business hours but as a private individual and not as a cashier, which fact is claimed by the defendants, the fact that he was interested in them personally again put the defendants upon inquiry. Suppose these payments were

made, as claimed, on what were thought to be *bona fide* checks and paid out by the teller in the scope of his duty as such. He was then acting in two capacities, as agent for the bank and for his undisclosed principal, and this fact once more put the defendant on notice. "Upon the proof that the transaction was known to the claimant to be an individual one and not with the bank, the burden is cast upon the claimant to establish that the act of the cashier thus done for his own individual benefit was authorized or ratified. *The test of the transaction is whether it is done with the bank and its business or with the cashier and in his business.*" *Campbell v. Manufacturer's National Bank,* 51 Atl., 497; *Moore v. Bank,* 111 U. S., 156; *Rochester & Charlotte Turnpike Ry Co. v. Paviour, supra; Williams v. Dorr,* 135 Pa. St. 445. Also "By putting an officer at the window to do its business, *a bank publishes to the world that he is there to do its business and not his business, that he has no power or authority to do any act outside the legitimate prosecution of the corporate enterprise.*" *Hier v. Miller,* 75 Pac. Rep., 76. From the opinions of the above cited cases, it is apparent that the payments by the teller should not have been taken as private acts. Even considered private acts, in the light of all the facts known to the defendant, the acts constituted notice that the defendants were apparently accepting money from one to whom it did not belong. This would cast upon the defendants the duty of inquiring into the matter far enough to see whether the facts were in accord with the appearances. If they were not, then they knew they could not honestly take the checks paid to them by Chisholm.

It cannot be doubted that in view of all the facts and the rulings applicable to them, the defendants had numerous and forcible suspicions that Chisholm was acting under a doubtful authority and any consistency with good faith and honesty demanded an inquiry into his authority.

It cannot be believed that the law as laid down by the Illinois court and in this case adopted by the Louisiana court is the true and accepted doctrine which is consistent with principles of fairness, law or morality. A nearer and more just rule is that which is laid down by *Rochester v. Paviour, supra,* and adopted by the weight of authority with a few isolated exceptions and which is the fairer and broader doctrine, *i. e., that one who suspects or ought to suspect, is bound to inquire, and the law presumes that he knows whatever inquiry would disclose.* Good faith alone is

not enough; good faith and honesty demand diligence and care and this combination is necessary, under the circumstances of this case, to put the defendants in the position of a *bona fide* holder with good title as against the one from whom it was stolen.

ACTION AGAINST STATE OFFICERS AN ACTION AGAINST THE STATE.

On January 14, 1909, the Arkansas Brick & Manufacturing Company, a corporation, instituted suit in the Pulaski Chancery Court against appellants, J. A. Pitcock, superintendent of the Arkansas State Penitentiary and the Governor of the State, Secretary of State, Attorney-general, Auditor of State, and State Commissioner of Mines and Agriculture, composing the Board of Commissioners of the Arkansas State Penitentiary, to restrain them from violating an alleged contract which had been entered into between them and the plaintiff for the furnishing to the latter of the labor of state convicts.

The prayer of the complaint was, that a temporary restraining order be made, restraining the defendants, and each of them, from taking any action looking to the withdrawal of the convicts, and requiring said Board of Penitentiary Commissioners to carry out the terms of the agreement; that upon final hearing a decree be entered as above prayed, and that said order of the board directing the superintendent to take away from plaintiff the convicts, and refusing to carry out its agreement be declared null and void.

It is alleged also, that the contract, as amended, which has been the subject of litigation in the case of *McConnell v. Arkansas Brick & Manufacturing Co., supra,* has been adjudged by the Pulaski Chancery Court and by the Supreme Court, on appeal, to be valid.

Upon filing the complaint, a temporary restraining injunction was issued and actual notice of such injunction conveyed to the appellant, Pitcock, but he acted in compliance with the resolutions of the Board of Penitentiary Commissioners, regardless of notice of issuance of the injunction. The question came to the Supreme Court of Arkansas on *certiorari* to review the lower court's judgment adjudging petitioner guilty of contempt of court.

Omitting all the points decided except what we deem the most important one, and the one upon which the decision in this case